



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[Docket No. USCG-2016-0257]**

**RIN 1625-AA09**

**Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is modifying the operating regulation that governs the DELAIR Memorial Railroad Bridge across the Delaware River, mile 104.6, at Pennsauken Township, NJ. This modified regulation will allow the bridge to be remotely operated from the Conrail South Jersey dispatch center in Mount Laurel, NJ, instead of being operated by an on-site bridge tender. This regulation will not change the operating schedule of the bridge.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2016-0257 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Hal R. Pitts, Fifth Coast Guard District (dpb); telephone (757) 398-6222, email Hal.R.Pitts@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On April 12, 2017, we published a document in the Federal Register entitled, “Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ” announcing a temporary deviation from the regulations, with request for comments (see 82 FR 17562). This temporary deviation commenced at 8 a.m. on April 24, 2017, and concluded at 7:59 a.m. on October 21, 2017. The comment period closed on August 17, 2017. The purpose of the deviation was to test the newly installed remote operation system of the DELAIR Memorial Railroad Bridge across the Delaware River, mile 104.6, at Pennsauken Township, NJ, owned and operated by Conrail Shared Assets. The installation of the remote operation system did not change the operational schedule of the bridge.

On June 30, 2017, we published a notice of proposed rulemaking (NPRM) entitled, “Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ” (see 82 FR 29800). This proposed regulation would allow the

bridge to be remotely operated from the Conrail South Jersey dispatch center in Mount Laurel, NJ, instead of being operated by an on-site bridge tender. This proposed regulation would not change the operating schedule of the bridge. The original comment period closed on August 18, 2017.

During the initial temporary deviation performed from 8 a.m. on April 24, 2017, through 7:59 a.m. on October 21, 2017, the bridge owner identified deficiencies in the remote operation center procedures, bridge to vessel communications, and equipment redundancy. Comments concerning these deficiencies were submitted to the docket and provided to the Coast Guard and bridge owner by representatives from the Mariners' Advisory Committee for the Bay and River Delaware.

On October 18, 2017, we published a document in the Federal Register entitled, "Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ" announcing a second temporary deviation from the regulations, with request for comments (see 82 FR 48419). This temporary deviation commenced at 8 a.m. on October 21, 2017, and concluded at 7:59 a.m. on April 19, 2018. This document included a request for comments and related material to reach the Coast Guard on or before January 15, 2018.

On December 6, 2017, we published a notice of proposed rulemaking; reopening of comment period; entitled "Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ" in the Federal Register (see 82 FR 57561). This document included a request for comments and related material to reach the Coast Guard on or before January 15, 2018.

On January 22, 2018, we published a notice of temporary deviation from regulations; reopening comment period; entitled “Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ” in the Federal Register (see 83 FR 2909). This document included a request for comments and related material to reach the Coast Guard on or before March 2, 2018.

On February 15, 2018, we published a notice of proposed rulemaking; reopening comment period; entitled “Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ” in the Federal Register (see 83 FR 6821). This document included a request for comments and related material to reach the Coast Guard on or before March 2, 2018.

The Coast Guard reviewed 26 comments posted to the docket and six reports with supporting documentation submitted by the bridge owner during the initial and second temporary deviation periods concerning the remote operation system of the DELAIR Memorial Railroad Bridge. Through this review, the Coast Guard found that further testing and evaluation of the remote operation system of the bridge was necessary before making a decision on the proposed regulation.

On April 26, 2018, we published a document in the Federal Register entitled, “Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ” announcing a third temporary deviation from the regulations, with request for comments (see 83 FR 18226). This temporary deviation commenced at 8 a.m. on April 19, 2018, and concluded at 7:59 a.m. on October 16, 2018.

This document included a request for comments and related material to reach the Coast Guard on or before August 17, 2018.

On May 4, 2018, we published a notice of proposed rulemaking; reopening comment period; entitled “Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ” in the Federal Register (see 83 FR 19659). This document included a request for comments and related material to reach the Coast Guard on or before August 17, 2018.

On October 17, 2018, we published a document in the Federal Register entitled, “Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ” announcing a temporary deviation from the regulations (see 83 FR 52319). This document was published to allow the DELAIR Memorial Railroad Bridge across the Delaware River, mile 104.6, at Pennsauken Township, NJ, to continue to be remotely operated from the Conrail South Jersey dispatch center in Mount Laurel, NJ, instead of being operated by an on-site bridge tender, to allow sufficient time for the Coast Guard to conduct an evaluation of the proposed rulemaking. This temporary deviation commenced at 8 a.m. on October 16, 2018, and is scheduled to conclude at 7:59 a.m. on December 15, 2018.

In total the Coast Guard received 26 comments posted to the docket and eight reports with supporting documentation submitted by the bridge owner on this rule. No comments were received during the third temporary deviation between April 19, 2018, and October 16, 2018.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The DELAIR Memorial Railroad Bridge across the Delaware River, mile 104.6, at Pennsauken Township, NJ, owned and operated by Conrail Shared Assets, has a vertical clearance of 49 feet above mean high water in the closed-to-navigation position. There is a daily average of 28 New Jersey Transit trains and eight Conrail freight trains that cross the bridge and a daily average of three bridge openings that allow one or more vessels to transit through the bridge during each opening. The bridge is normally maintained in the closed position due to the average daily number of trains crossing the bridge. The operating schedule is published in 33 CFR 117.716. This current operating schedule has been in effect since 1984 and will not change with the implementation of remote operation of the bridge. However, within this modified operating regulation, section 117.716 has been restructured to clearly distinguish the remote operation of the DELAIR Memorial Railroad Bridge. This modified operating regulation allows the bridge to be operated remotely from the bridge owner's South Jersey dispatch center in Mount Laurel, NJ.

The Delaware River is used by a variety of vessels, including deep draft commercial vessels, tug and barge traffic, recreational vessels, and public vessels, including military vessels of various sizes. The three-year average number of bridge openings and maximum number of bridge openings by month and overall for 2013 through 2015, as drawn from the data contained in the bridge tender logs, is presented below.

<b>Month</b>	<b>Average Openings</b>	<b>Maximum Openings</b>
January	73	88
February	54	56
March	80	94
April	55	68
May	60	67
June	60	71
July	122	162
August	112	138
September	143	201
October	109	117
November	100	116
December	100	122
Monthly	89	201
Daily	3	7

The bridge owner and the maritime community have been working together since 2013 in an effort to incorporate sensors and other technologies into the bridge and the Conrail South Jersey dispatch center to allow for the safe and effective remote operation of the bridge.

#### **IV. Discussion of Comments and Changes to the Final Rule**

During the initial and second temporary deviation periods between April 24, 2017, and April 19, 2018, 26 comments were received, including three duplicate comments, one process comment, and two comments not related to this rule. No comments were received during the third temporary deviation period between April 19, 2018, and October 16, 2018.

Comments were received from six professional mariners between December 7, 2017, and January 11, 2018, during the second temporary deviation period. These comments expressed concerns associated with the remote operation

center's (1) failure to provide timely replies to mariner's requests for a bridge opening, (2) failure to follow established communications protocols, (3) unprofessional responses to mariner's requests and a perception of ineffectual management and a cultural bias against the needs of maritime transportation. These comments were in response to the deficiencies observed during the second temporary deviation period and were observed and reported during the first temporary deviation period, along with corrective actions taken by the bridge owner. Following a review of these comments, the bridge owner acknowledged the recurring deficiencies in the remote operation of the bridge related to human performance factors and management, and reported that additional corrective actions were taken. The Coast Guard found that the bridge owner's actions taken to address the comments received from professional mariners have been satisfactory, given the bridge was operated safely and effectively during the third temporary deviation, which included 681 bridge openings, without further comment from any mariners.

During the first temporary deviation period, comments were received from the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters that: (1) questioned the remote operation center's capability to safely and effectively operate the bridge, (2) indicated that bridge tenders were currently performing on-site bridge maintenance, inspection and repair functions that would no longer be performed at the required frequencies, and (3) reported multiple remote operation system failure conditions as defined in the notice of proposed rulemaking. The bridge owner advised the Coast Guard



that on-site bridge tenders were not responsible for performing on-site bridge maintenance, inspection or repairs functions and that those functions would continue to be performed by qualified personnel. In reviewing the other two comments above in conjunction with the details concerning the remote operation of the bridge during the second and third temporary deviation periods, the Coast Guard has found that the remote operation center is capable of safely and effectively controlling the bridge and early remote operation system failures have been overcome by the bridge owner's corrective actions.

The Delaware Riverkeeper Network submitted comments during the first temporary deviation period indicating that: (1) they were opposed to the regulation based on increased potential for negative environmental impacts to local and regional communities, (2) human oversight via an on-site bridge tender should not be replaced by a remote device, (3) the provision for qualified personnel to return and operate the bridge within 60 minutes was not considered an adequate response time, and (4) they believed that the proposed rule was a significant regulatory action based on increased potential for negative environmental impacts. The Coast Guard reviewed these comments and found that there is no evidence to support that remote operation of the bridge increases the potential for negative environmental impacts and is not likely to have an adverse effect to the environment in a material way, therefore the proposed rule is not a significant regulatory action. The Coast Guard also found that the remote operation system does not replace human oversight, and the 60-minute response time was tested throughout the three temporary deviation periods resulting in

effective restoration of the remote operation system of the bridge and no adverse impact on navigation.

12 comments expressed concerns associated with general safety and security of the bridge and the potential inability of remote operation center operators to safely operate the bridge. The Coast Guard found that: (1) although the on-site bridge tender's duties only include operation of the bridge, the bridge owner's implementation of additional safety and security technologies, in conjunction with the remote operation center's capabilities in providing visibility of the bridge and waterway to the remote operation center operator, adequately addressed the general safety and security related comments. Additionally, the bridge operated safely and effectively during the three temporary deviation periods, which included 2,597 bridge openings.

The Coast Guard finds that the comments received do not require any changes in the regulatory text as presented in the NPRM.

## **V. Discussion of Final Rule**

This operating regulation allows the bridge to be operated remotely from the bridge owner's South Jersey dispatch center in Mount Laurel, NJ. The remote operation system includes eight camera views (four marine and four rail), two forward-looking infrared equipped camera views (marine), marine radar, a dedicated telephone line for bridge operations, radio telephone on VHF-FM channels 13 and 16, and an automated identification system (AIS) transmitter to provide bridge status. The AIS transmitter is installed on the New Jersey side of the bridge at the bridge and land intersection in approximate position

39°58'50.52" N (39.9807), 75°03'58.75" W (-75.06632). The AIS transmitter is assigned maritime mobile service identity (MMSI) number 993663001 and provides the status of the bridge (open/closed/inoperative) via the name transmitted by the private aids to navigation as DELAIR BRG-OPEN (fully open and locked position, channel light green), DELAIR BRG-CLOSED (other than fully open, not inoperative), or DELAIR BRG-INOP (other than fully open, inoperative). The AIS transmitter transmits the bridge status every two minutes and upon a change in bridge status.

The remote operation system is designed to provide greater or equal visibility of the waterway and bridge and in signals (communications) via sound and visual signals and radio telephone (voice) via VHF-FM channels 13 and 16 compared to the on-site bridge tender. The remote operation system also incorporates real-time bridge status via AIS signal to aid mariners in voyage planning and navigational decision-making, a dedicated telephone line (856) 231-2301 for bridge operations, and push-to-talk (PTT) capability on VHF-FM channel 13.

The signals for the remote operation center or on-site bridge tender to respond to a sound signal for a bridge opening include: (1) when the draw can be opened immediately - a sound signal of one prolonged blast followed by one short blast and illumination of a fixed white light not more than 30 seconds after the requesting signal, and (2) when the draw cannot be opened immediately - five short blasts sounded in rapid succession and illumination of a fixed red light not more 30 seconds after the vessel's opening signal. The signals for the remote

operation center or on-site bridge tender to respond to a visual signal for a bridge opening include: (1) when the draw can be opened immediately - illumination of a fixed white light not more than 30 seconds after the requesting signal, and (2) when the draw cannot be opened immediately - illumination of a fixed red light not more than 30 seconds after the vessel's opening signal. The fixed white light will remain illuminated until the bridge reaches the fully open position. The fixed white and red lights will be positioned on the east (New Jersey) bridge abutment adjacent to the navigation span.

Vessels that require an opening shall continue to request an opening via the methods defined in 33 CFR 117.15(b) through (d) (sound or visual signals or radio telephone (VHF-FM) voice communications), via telephone at (856) 231-2301, or via push-to-talk (PTT) on VHF-FM channel 13. Vessels may push the PTT button five times while on VHF-FM channel 13 to request an opening.

The remote operation system will be considered in a failed condition and qualified personnel will return and operate the bridge within 60 minutes if any of the following conditions are found: (1) the remote operation system becomes incapable of safely and effectively operating the bridge from the remote operation center, (2) visibility of the waterway or bridge is degraded to less than equal that of an on-site bridge tender (all eight camera views are required), (3) signals (communications) via sound or visual signals or radio telephone (voice) via VHF-FM channels 13 or 16 become inoperative, or (4) AIS becomes inoperative.

## **VI. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that the operating schedule published in 33 CFR 117.716 will not change with the remote operation of the bridge and the remote operation of the bridge is not likely to have an adverse effect to the environment.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and

operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule

will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. The Coast Guard received zero comments concerning the above Act.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Instruction.

A Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.



## List of Subjects in 33 CFR Part 117

### Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.716 to read as follows:

#### § 117.716 Delaware River.

- (a) The following apply to all drawbridges across the Delaware River:
  - (1) The draws of railroad bridges need not be opened when there is a train in the bridge block approaching the bridge with the intention of crossing or within five minutes of the known time of the passage of a scheduled passenger train.
  - (2) The opening of a bridge may not be delayed more than five minutes for a highway bridge or 10 minutes for a railroad bridge after the signal to open is given.
  - (3) The owners of drawbridges shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching

the bridge either up or downstream.

- (b) The draw of the Conrail Memorial Railroad Bridge, mile 104.6, at Pennsauken Township, NJ shall be operated as follows:
  - (1) The bridge will be remotely operated from the Conrail South Jersey dispatch center in Mount Laurel, NJ, unless the remote operation system is in a failed condition.
  - (2) An AIS transmitter has been installed on the New Jersey side of the bridge at the bridge and land intersection in approximate position 39°58'50.52" N (39.9807), 75°03'58.75" (-75.06632). The AIS transmitter is assigned maritime mobile service identity (MMSI) number 993663001. The status of the bridge (open/closed/inoperative) will be provided via the name transmitted by the AIS private aids to navigation as DELAIR BRG-OPEN (fully open and locked position, channel light green), DELAIR BRG-CLOSED (other than fully open, not inoperative), or DELAIR BRG-INOP (other than fully open, inoperative). The AIS transmitter will transmit the bridge status every two minutes and upon a change in the bridge status.
  - (3) The remote operation system will be considered in a failed condition and qualified personnel will return and operate the bridge within 60 minutes if any of the following conditions are found:
    - (i) The remote operation system becomes incapable of safely and effectively operating the bridge from the remote operation center; or

- (ii) Visibility of the waterway or bridge is degraded to less than equal that of an on-site bridge tender; or
  - (iii) Signals (communications) via sound or visual signals or radio telephone (voice) via VHF-FM channels 13 or 16 become inoperative; or
  - (iv) AIS becomes inoperative.
- (4) Vessels that require an opening shall continue to request an opening via the methods defined in §117.15(b) through (d) (sound or visual signals or radio telephone (VHF-FM) voice communications), via telephone at (856) 231-2301, or via push-to-talk (PTT) on VHF-FM channel 13. Vessels may push the PTT button five times while on VHF-FM channel 13 to request an opening.
- (5) The signals for the remote operation center or on-site bridge tender to respond to a sound signal for a bridge opening include:
- (i) When the draw can be opened immediately - a sound signal of one prolonged blast followed by one short blast and illumination of a fixed white light not more than 30 seconds after the requesting signal; or
  - (ii) When the draw cannot be opened immediately - five short blasts sounded in rapid succession and illumination of a fixed red light not more 30 seconds after the vessel's opening signal.
- (6) The signals for the remote operation center or on-site bridge tender to respond to a visual signal for a bridge opening include:

- (i) When the draw can be opened immediately - illumination of a fixed white light not more than 30 seconds after the requesting signal; or
  - (ii) When the draw cannot be opened immediately - illumination of a fixed red light not more 30 seconds after the vessel's opening signal.
- (7) The fixed white light will remain illuminated until the bridge reaches the fully open position. The fixed white and red lights will be positioned on the east (New Jersey) bridge abutment adjacent to the navigation span.

Dated: November 14, 2018

G. G. Stump  
Captain, U.S. Coast Guard  
Acting Commander, Fifth Coast Guard District  
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